

**ASSEMBLY BILL**

**No. 742**

**Introduced by Assembly Member Canciamilla**

February 19, 2003

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An act to amend Section 1603 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 742, as introduced, Canciamilla. Streambed alteration.

Under existing law, it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the Department of Fish and Game, or use any material from the streambeds, without first notifying the department of that activity.

*Under existing law, if an activity involves certain routine maintenance and operations, notice to, and agreement with the department is not required subsequent to the initial notification and agreement if the notice and agreement occurred prior to January 1, 1977, unless the work is substantially changed or conditions affecting fish and wildlife resources substantially change and those resources are adversely affected by the activity conducted under the agreement.*

*This bill would add the routine maintenance and operation of hydroelectric facilities to the list of activities that do not require the notice and agreement as described above.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1603 of the Fish and Game Code is amended to read:

1603. (a) It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds, without first notifying the department of that activity, except when the department has been notified pursuant to Section 1601. The department, within 30 days from the date of receipt of that notice, or within the time determined by mutual written agreement, ~~shall~~, when an existing fish or wildlife resource may be substantially adversely affected by that activity, *shall* notify the person of the existence of that fish or wildlife resource together with a description of the fish or wildlife, and shall submit to the person its proposals as to measures necessary to protect fish and wildlife. Upon a determination by the department of the necessity for onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall notify the affected parties that it shall make an onsite investigation of the activity and shall make that investigation before it proposes any measure necessary to protect the fish and wildlife. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected.

(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected person shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the department's proposals are not acceptable to the affected person, the person shall so notify the department. Upon request, the department shall meet with the affected person within seven days from the date of receipt of that notification or by a date that may be mutually agreed upon for the purpose of developing proposals that are acceptable to the department and the affected person.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. However, appointment of the panel may be deferred

1 by mutual consent of the parties. The panel shall be established  
 2 within seven days from the date of that meeting and shall be  
 3 composed of one representative of the department, one  
 4 representative of the affected person, and a third person mutually  
 5 agreed upon or, if no agreement can be reached, the third person  
 6 shall be appointed in the manner provided by Section 1281.6 of the  
 7 Code of Civil Procedure. The third person shall act as panel chair.  
 8 The panel may settle disagreements and make binding decisions  
 9 regarding fish and wildlife modifications. The arbitration shall be  
 10 completed within 14 days from the date that the composition of the  
 11 panel is established, unless the time period is extended by mutual  
 12 agreement. The expenses of the department representative shall be  
 13 borne by the department; the expenses of the representative of the  
 14 person who diverts or obstructs the natural flow, or changes the  
 15 bed, of any river, stream, or lake, or uses any material from the  
 16 streambeds shall be borne by that person; and the expenses of the  
 17 chair of the panel shall be paid one-half by each party.

18 (c) It is unlawful for any person to commence any activity  
 19 affected by this section until the department has found that it will  
 20 not substantially adversely affect an existing fish or wildlife  
 21 resource or until the department's proposals, or the decisions of a  
 22 panel of arbitrators, have been incorporated into the activity. If the  
 23 department fails to act within 30 days from the date of the receipt  
 24 of the notice, the person may commence the activity. The  
 25 department shall not condition the streambed alteration agreement  
 26 on the receipt of another state or federal permit.

27 (d) It is unlawful for any person to engage in an activity  
 28 affected by this section, unless the activity is conducted in  
 29 accordance with the department's proposals or the decisions of the  
 30 panel of arbitrators.

31 (e) If an activity involves the routine maintenance and  
 32 operation of water supply, drainage, flood control, ~~or~~ waste  
 33 treatment and disposal facilities, *or hydroelectric facilities*, notice  
 34 to and agreement with the department shall not be required  
 35 subsequent to the initial notification and agreement unless the  
 36 work as described in the agreement is substantially changed or  
 37 conditions affecting fish and wildlife resources substantially  
 38 change and those resources are adversely affected by the activity  
 39 conducted under the agreement. This subdivision applies in any



1 instance where notice to, and agreement with, the department ~~has~~  
2 ~~been~~ *was* attained prior to January 1, 1977.

3 (f) (1) Except as provided in paragraph (2), this section does  
4 not apply to any of the following projects:

5 (A) Immediate emergency work necessary to protect life or  
6 property.

7 (B) Immediate emergency repairs to public service facilities  
8 necessary to maintain service as a result of a disaster in a  
9 disaster-stricken area in which a state of emergency has been  
10 proclaimed by the Governor pursuant to Chapter 7 (commencing  
11 with Section 8550) of Division 1 of Title 2 of the Government  
12 Code.

13 (C) Emergency projects undertaken, carried out, or approved  
14 by a public agency to maintain, repair, or restore an existing  
15 highway, as defined in Section 360 of the Vehicle Code, except for  
16 a highway designated as an official state scenic highway pursuant  
17 to Section 262 of the Streets and Highways Code, within the  
18 existing right-of-way of the highway, damaged as a result of fire,  
19 flood, storm, earthquake, land subsidence, gradual earth  
20 movement, or landslide, within one year of the damage. Work  
21 needed in the vicinity above and below a highway may be  
22 conducted outside of the existing right-of-way if it is needed to  
23 stop ongoing or recurring mudslides, landslides, or erosion that  
24 pose an immediate threat to the highway or to restore those  
25 roadways damaged by mudslides, landslides, or erosion to their  
26 predamage condition and functionality. This subparagraph does  
27 not exempt from this section any project undertaken, carried out,  
28 or approved by a public agency to expand or widen a highway  
29 damaged by fire, flood, storm, earthquake, land subsidence,  
30 gradual earth movement, or landslide.

31 (2) The person performing the project shall notify the  
32 department within 14 days from the date of commencement of a  
33 project exempted by this subdivision.

34 (3) For purposes of this subdivision, “emergency” means an  
35 emergency, as defined in Section 21060.3 of the Public Resources  
36 Code.

37 (g) The department may enter into agreements with applicants  
38 for a term of not more than five years for the performance of  
39 activities subject to this section. The terms of the agreement may  
40 be renegotiated at any time by mutual consent of the parties. Each

1 agreement shall be renewed automatically by the department at the  
2 expiration of its term unless the department determines that there  
3 has been a substantial change in conditions. If there is a  
4 disagreement between the department and the applicant as to  
5 whether there has been a substantial change in conditions, the  
6 department and the applicant shall proceed to arbitration pursuant  
7 to subdivision (b). The department may charge a fee when the  
8 agreement is entered into and for each renewal, but may not charge  
9 an annual fee for this purpose.

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